

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MORO JUMDATAL, DEFENDANT AND APPELLANT.

G.R. No. L-8055. May 25, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

The herein appellant was found guilty by the Court of First Instance of Zamboanga of the crime of murder without any aggravating or mitigating circumstance and sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law, to pay an indemnity of P6,000 to the heirs of the deceased Moro Hadjirol, and to pay the costs. He appealed from this decision on the ground that the court erred (1) in rejecting the plea of self-defense; (2) in finding the appellant guilty beyond reasonable doubt of the crime of murder qualified by treachery and assuming that he is guilty thereof; and (3) in not taking into consideration the mitigating circumstances attending the commission of the offense charged against him.

Carefully considered, the issue involved in this case narrows down to the credibility of witnesses or, to be more exact, whether the version about the incident given by the witnesses for the defense should be believed instead of that of the prosecution to which the lower court gave credence. The lower court gave more weight to the witnesses for the prosecution and thus reached the conclusion that the herein appellant is guilty of the crime charged in the information. It found that during a market day, in the afternoon of June 22, 1952, the appellant and his companion Moro Matangon arrived at a private market owned and operated by Moro Tamsi in the sitio of Bulibul, Lamitan District, Basilan City. They approached a stall of one Amil alias Amilhanja and asked the latter for the price of one bundle of fish. Amilhanja told them that the price was P0.80. Moro Matangon tried to bargain for P0.50; Amilhanja did not agree, hence Moro Matangon could not buy the fish. He stood, however, near the stall and when other customers came to buy fish and asked for the price of each bundle and Amilhanja gave the price of P0.80, Moro Matangon remarked: "This is the only Moro Samal who is hard-headed and does not like to lower the price of his fish" and immediately cut into small pieces or minced all the fish Amilhanja was selling. Thereupon the latter went at once to report the incident to Moro Tamsi who intervened and ordered Moro Matangon to pay the price of the fish he destroyed. Matangon refused to pay, so Moro Tamsi requested the mother of Moro Matangon, who was at that time present, to pay to Amilhanja and, when she was already willing to pay the price of the fish, Moro Matangon told his mother not to do it or intervene and that if she would pay he would kill her. At this juncture, Moro Tamsi told Moro Matangon not to be stubborn and pay; in answer, the latter unsheathed his pira (a kind of bolo) and tried to strike at Moro Amilhanja. Moro Tamsi stopped him and wrested from him his pira. When the appellant Moro Jumdatal saw that Moro Tamsi was able to disarm his companion Matangon, he unsheathed his barong and wanted to strike at everybody, but he was stopped by the people present in the market. Right away Moro Matangon and Moro Jumdatal left the market taking a trail towards the interior of the place. Meanwhile Moro Tamsi told Amilhanja to take his vinta and sail out to the sea in order to avoid further trouble with Matangon and Jumdatal. Heeding this advice, Moro Amilhanja left the place accompanied by Moro Tamsi. When Moro Matangon and Jumdatal were about 70 brazas from the market place and they met on the trail Moro Hadjirol, an old man of 80 years, who was going to the market, Moro Jumdatal suddenly hacked Moro

Hadjirol with his barong, the blow landing on the latter's right shoulder and penetrating his upper right arm, the clavicle and the right armpit and as a result thereof Moro Hadjirol died right in the spot a few moments after. After giving the blow, appellant Jumdatal and his companion Matangon ran away. Mora Mihilan, who was at the place and saw what happened to her father, shouted for help; Moro Tamsi, who was on his way back to the market, heard the voice of Mora Mihilan and the two went to the place where Moro Hadjirol was attacked, but there they no longer saw Moros Jumdatal and Matangon, instead they found Hadjirol already dead.

The witnesses for the defense testified to the effect that in the afternoon of June 22, 1952, appellant Moro Jumdatal, accompanied by Moro Matangon, went to sitio Bulibuli to look for his carabao which has been stolen days before. In that place they met Yakan Urin accompanied by Kintalan who was also in search of a stolen carabao. At about 20 brazas from the house of Moro Hadjirol, Moro Jumdatal and Moro Matangon found inside the bushes there the carabao Jumdatal was looking for; then Jumdatal untied the carabao and led it towards the road. Hadjiroi noticed it and together with Abdurasid ran after Jumdatal and his companion Matangon. Hadjiroi was armed with a kris and Abdurasid with a spear and barong. Upon overtaking Moros Jumdatal and Matangon, Hadjiroi took hold of the ring attached to the nose of the carabao with his left hand while his right hand was resting on his kris. Jumdatal then took hold of the rope of the carabao with his left hand while his right hand was holding his barong. While Jumdatal and Hadjiroi were in this position, Abdurasid went behind Jumdatal and in that precise moment Moro Tamsi arrived and grabbed the pira of Matangon and ordered Abdurasid to attack Jumdatal. Abdurasid at once thrust his spear at Jumdatal, hitting the latter on the left buttock, the spear penetrating through and through such that its point came out of the left leg. Upon receiving the blow of Abdurasid, Jumdatal unsheathed his barong, hit Hadjiroi on the right shoulder and immediately ran to the bushes followed by Matangon, Yakan Urin and Kintalan. The next day Jumdatal was taken to the house of his uncle Yakan Jabaran whom he informed that Abdurasid was responsible for the spearthrust on his left buttock. Yakan Jabaran then went to Lieut. Coile to report the incident and the latter ordered him to bring Jumdatal to him. Yakan Jabaran answered, however, that Jumdatal could not walk, so Lieut. Caoile told him to bring Jumdatal as soon as his wound was healed. Yakan Jabaran also reported the incident to counselor Pamaran who told him to buy medicines, which he did. Moro Jumdatal remained under treatment for over a month and after recovering from his wound, Yakan Jabaran brought him to Lieut. Caoile and counselor Pamaran at Mangal, but then the latter told them to go home as he would think over the case as Jumdatal was, after all, the innocent party, so both Yakan Jabaran and Moro Jumdatal went home.

The appellant vigorously contends in this instance that he inflicted the fatal blow on Moro Hadjirol in the defense of his person because he was attack by Abdurasid, a companion of Moro Hadjirol, but the lower court gave no credence to this defense on the ground that it is unbelievable. We have examined the evidence on record and we find the lower court correct in not giving credence to appellant's pretension. Firstly, because if the appellant was attack by Abdurasid, his natural reaction would be not to give a blow to Hadjirol, who was not attacking him, but to Abdurasid who speared him; yet the evidence for the defense tended to show the contrary. Secondly, the herein appellant and his witnesses testified that Jumdatal was able to run away and escape from the place; but, according to appellant, the spear of Abdurasid penetrated through and through his buttock and its point came out of the left leg so that the wound inflicted on Jumdatal by Abdurasid was so serious that had he suffered such injury he would not be able even to walk; yet according to the defense, he was able to run away after inflicting the fatal blow on the deceased. Thirdly, were it true, as the defense so pretends, that in the incident at bar Moro Tamsi was armed with a kris and Moro Abdurasid with a barong and spear while Matangon, had no arm and the appellant had only his barong, the appellant herein would not escape death in the hands of Moros Tamsi and Abdurasid who were then bent to attack him, especially because he was already wounded on his left buttock and alone, he was no match to Adburasid and Tamsi in that occasion; yet, according to the defense, nothing happened to the herein

appellant after he had hacked the deceased Hadjirol. Fourthly, the appellant herein did not file nor caused the filing of an action against Moros Abdurasid and Tamsi. Were it true that he was speared by Abdurasid upon order of Moro Tamsi, his failure to file action against the latter and Moro Abdurasid is more than sufficient ground to doubt his testimony and that of his witnesses on the matter. On the other hand, the evidence shows that immediately after the incident, it was Datu Mohamad, the son-in-law of the deceased Hadjirol, who immediately reported the incident to Sgt. Ibno of the Lamitan police station and thus the present case was initiated against the herein appellant. Fifthly, Lieut. Caoile and "counselor Pamaran were jiot presented by the defense to corroborate the alleged report Yakan Jabaran made about the incident as to how it happened, and this fact coupled with the failure of the herein appellant to take action against Abdurasid and Tamsi constitute another ground for doubting the testimony of the herein appellant and his witness Yakan Jabaran. Sixthly, according to the defense, Moro Tamsi suddenly appeared at the place of the incident and instructed Abdurasid to attack the herein appellant. There is no showing about the relations between Abdurasid and Tamsi or the relations of the latter with the deceased Hadjirol or the interest of Tamsi in the carabao which apjtellant claims to have been found near the house of the deceased. In the absence of evidence on these points, it is quite hard to believe that Moro Tamsi did really appear at the scene of the crime and gave orders to Abdurasid to attack the herein appellant. Accordingly, between the version given by the prosecution" and that given by the defense, we find it more reasonable to believe in the former than in the latter and, therefore, we find no reason for disturbing the decision appealed from.

It is also contended by the appellant that the crime at bar should be considered only as homicide instead of murder, but it is undisputable that a sudden attack constitutes treachery and, in this particular case, the evidence conclusively shows that the herein appellant suddenly attacked the deceased Hadjirol without the slightest provocation on the part of the latter; hence, appellant was properly found guilty of murder and sentenced accordingly.

In *People vs. Dosal*, (92 Phil., 877), April 17, 1953, we held:

"As appellant met the deceased walking along the street appellant suddenly and without warning pulled out a bolo under his shirt and with full strength thrust it upon the body of Fernandez. Fernandez fled and appellant continued to chase him and struck him again until he finally fell. There is no doubt that the sudden attack made upon Fernandez without any warning was accompanied by treachery thereby qualifying the killing as murder."

Wherefore, finding no errors in the decision appealed from the same is hereby affirmed in toto.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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